

**COMPLAINT INVESTIGATION
WASHOE COUNTY SCHOOL DISTRICT
(#WA062409)**

INTRODUCTION

On 6/24/09, the Nevada Superintendent of Public Instruction received a complaint dated 6/24/09 from parents alleging violations in the special education program of a student with disabilities attending Washoe County School District (WCSD). An investigation team was appointed to examine the allegations that the WCSD failed to: 1) implement the student's individualized educational program (IEP), specifically with regard to quarterly progress reports and the student's behavioral goals; 2) use technically sound instruments that are valid and reliable for the assessments and evaluations for which they were used, specifically *Questions About Behavioral Function (QABF)*, *Prescription Sheets* and *Teacher Input Forms*; 3) respond in a timely fashion to parental requests as well as concerns about assessments used to conduct a functional behavior analysis (FBA) using the QABF, Prescription Sheets and Teacher Input Forms; 4) obtain written informed consent from the parents for assessments, specifically the QABF, Prescription Sheets and Teacher Input Forms; and 5) provide trained and knowledgeable personnel to serve the student and conduct assessments.

COMPLAINT ISSUES

The allegations articulated in the 6/24/09 complaint correspondence, and further clarified by a review of documents and interviews, raised the following issues under the jurisdiction of the Nevada Department of Education (NDE) for the 2008/2009 school year:

- Issue 1: Whether WCSD complied with federal and state requirements to implement the student's IEPs with regard to:
- a. Providing quarterly progress reports for behavioral and occupational therapy (OT) goals
 - b. The student's behavioral goals
- Issue 2: Whether WCSD complied with federal and state requirements to obtain consent in a timely fashion from the parents when it conducted an FBA with regard to the Prescription Sheets, Teacher Input Forms and the QABF, including whether the parents were fully informed of all information relevant to the activity for which the consent was sought.
- Issue 3: Whether WCSD complied with state requirements to use technically sound instruments that were valid and reliable for the purposes for which they were used with regard to the Prescription Sheets, Teacher Input Forms and the QABF.
- Issue 4: Whether WCSD complied with state requirements to:
- a. provide qualified personnel to administer and interpret assessments with regard to the QABF, Prescription Sheets, and Teacher Input Forms and
 - b. appropriately and adequately prepare and train its personnel with regard to the issuance of quarterly progress reports and the inclusion of certain information in the Present Levels of Performance in the IEP.

PERSONS INTERVIEWED

The investigation team interviewed the following persons:

- Parents
- Student support services area administrator (area administrator)
- Case manager
- Special education program consultant (program consultant)
- Teacher's aide (aide)

DOCUMENTS REVIEWED

The documents reviewed by the investigation team included the following:

1. 5/21/08 annual IEP
2. 10/16/08 revised IEP
3. 1/5/09 revised IEP
4. 5/18/09 annual IEP
5. Third and fourth quarter specialized progress reports for 2008/2009 school year
6. Prescription sheets dated 4/20/09 through 6/3/09
7. Observation notes completed by the aide noting antecedents, behaviors and consequences (ABC forms) dated 3/11/09 through 6/3/09
8. Student self monitoring reports dated 3/20/09 through 5/28/09
9. Special Education Department Teacher Input Forms (Teacher Input Forms) dated 3/3/09-3/5/09
10. Notes sent home from teachers (Home Notes) dated 1/27/09 through 6/1/09
11. FBA form dated 1/21/09
12. Fast-R FBA Screening Tool
13. QABF questionnaires filled out on 12/3/08 and 1/26/09
14. QABF Manual
15. Teacher license information for case manager
16. 2008/2009 student report card
17. Prior Written Notices dated 4/1/09—6/25/09
18. Emails dated 10/30/08 and 12/2/08 between district and parents

The investigation team also reviewed the following material:

- Nevada Administrative Code (NAC), Chapter 388
- Individuals with Disabilities Education Act (IDEA) Regulations, 34 CFR Part 300

FINDINGS OF FACT

This investigation involved a middle school student eligible for special education with autism, who attended WCSD during the 2008/2009 school year. A review of documents, as well as interviews with the parents, area administrator, case manager, program consultant and aide revealed the following facts.

The 2008/2009 school year began on 8/25/08 and ended on 6/3/09. During the 2008/2009 school year, the student had four IEPs in effect: a 5/21/08 annual IEP, a 10/16/08 revised IEP, a 2/5/09 revised IEP and a 5/18/09 annual IEP (IEPs). The case manager and the program consultant were two of the eleven members of the 5/18/08 IEP committee. There was no notation in any of the IEPs for district personnel to have any specific training. The student was enrolled in five regular education academic classes and one non-academic class.

Quarterly Progress Reports

The student's IEPs required that there be quarterly progress reports for the IEPs' annual goals for the 2008/2009 school year. The student had one annual behavioral goal, two annual speech goals and two annual occupational therapy (OT) goals. The case manager reported that she was responsible for making sure the quarterly progress reports were issued. There were no requirements stated in the IEPs regarding training needed in order to develop the quarterly progress reports.

The case manager reported that 1st and 2nd quarter progress reports for the annual behavioral goal were not issued for the student. The parents and the district reported that quarterly progress reports for the annual behavioral goal were issued for the 3rd and 4th quarters of the 2008/2009 school year. No quarterly

progress reports were issued with respect to the two annual OT goals. (There was no allegation that the progress reports for speech were not provided.)

Behavioral Goal

The annual behavioral goal stated in the IEPs was to “increase...on-task behaviors during non-preferred activities in a classroom setting by meeting the following objectives for 4/5 trials over period of 5 consecutive opportunities”. The five short-term objectives for the behavioral goal consisted of: 1) complying with teacher/staff directions with no more than 2 prompts as measured by observations and teacher/staff recorded data on 9/10 trials over 5 consecutive opportunities; 2) following two step directions as measured by observation and teacher/staff recorded data for 4/5 trials, over 5 consecutive opportunities; 3) increasing time spent on non-preferred activities with an average of less than 3 prompts by 3 minutes each trimester as measured by observations and teacher/staff recorded data on 4/5 trials; 4) asking and answering questions in an appropriate manner (raising hand, waiting for turns and using proper volume) with no more than 2 prompts as measured by observation and teacher/staff recorded data on 9 out of 10 trials over a period of 5 consecutive opportunities and 5) turning in assignments with less than two prompts as measured by teacher/staff recorded data maintaining a criteria of 90% over a period of 5 consecutive opportunities.

Hereinafter, the behavioral goal and accompanying short-term objectives will be referenced collectively as the behavioral goals except when it is necessary to distinguish them for purposes of clarity.

The aide reported that prior to 3/9/09, data were not collected to monitor the progress of the student with respect to the behavioral goals. ABC Forms describing the student’s off-task behaviors were kept by the aide from 3/9/09-6/3/09. The formatting of the ABC Forms changed when it was determined that the data collected on the initial forms was inadequate. On all of the ABC forms from 3/9/09 to 6/3/09, when off-task behaviors occurred, the aide indicated the antecedent, the behavior and the consequence (intervention). The interventions used included prompting, ignoring and redirection.

Prescription Sheets (discussed below) were used to monitor the student’s behavioral goals and indicated when interventions were used when some off-task behaviors occurred in order to monitor the student’s progress towards the behavioral goals.

Prescription Sheets

The case manager reported that the Prescription Sheet was an observation form designed by the autism consultant for the aide to record the student’s behavior with regard to the behavior goals. The case manager and the aide reported that the aide filled out the Prescription Sheets on a daily basis between 4/20/09 and 6/3/09. The Prescription sheets included on the left hand column, the behavioral goal and each of the five short-term objectives. A review of the sheets shows the aide tallied behaviors for each of the five short-term objectives, collectively 124 times during the period of 4/20/09-6/3/09. For 9 of these 124 times, the aide indicated that the student was at 100%, even though the sheets show that the student did in fact still need prompting on these occasions.

The parents reported that the program consultant could offer no explanation for the fact that the aide had recorded that the student was 100% independent on the 9 occasions when she had still needed prompting. During interviews with the investigation team, the program consultant stated that she agreed with the parents that there was no logical reason for the inconsistencies in the prescription sheets tallies.

Teacher Input Forms

On 3/3/09 the case manager distributed Teacher Input Forms to the student’s five regular education academic teachers. The area coordinator and the case manager reported that the Teacher Input Form was a preprinted form used by WCSD teachers in order to gather input when preparing to write IEPs. The

Teacher Input Form stated that “As I begin to write the IEP for our student, I want to make sure that I include and consider the valuable information you can provide about the above student. I am requesting your assistance to provide information in the following areas. Please feel free to add additional information on another sheet if needed. The information provided may be put into our student’s IEP. I truly appreciate your input.”

The areas for teachers to fill in included their opinions about the following: 1) academic strengths/needs; 2) social skills strengths/needs; 3) study habits/independent time strengths/needs; 4) IEP compliance (what accommodations or interventions have you done with this student, does this student’s behavior impede their learning or the learning of others?) and 5) goals (do you feel the student has met the goals with relation to your class, what goals that may pertain to your subject area should we focus on, other concerns you may have regarding this student?). Each of the five regular education academic teachers completed the Teacher Input Forms, which did not require them to collect new data but merely to summarize existing progress monitoring data.

Parental Consent

No written parental consent was sought by the district prior to its use of the Prescription Sheets, Teacher Input Forms or the QABF discussed below.

QABF

In a 10/30/08 email to the principal, the parents stated that they had previously requested the collection of data for an FBA and if the FBA data were not being recorded, that the school begin gathering data immediately so that the data gathered could be used, if necessary, to modify the student’s behavior plan. The case manager, in a 12/2/08 email to the parents reported that before they could write a behavior plan, the student’s teachers would be given the QABF and several other assessment forms to complete. She suggested two target behaviors and informed the parents that she would move forward when they agreed. The parents agreed to the two target behaviors in a 12/2/09 response to the case manager but did not indicate agreement to the use of any specific tools for the collection of the FBA data.

After receiving the parents’ response in the 12/2/09 email indicating concurrence with the focus for the assessment, the case manager reported she began conducting an FBA. Several FBA assessment forms, including the QABF were filled out by staff working with the student. While the QABF was administered by the case manager to the student’s regular education teachers on 12/3/08 and again on 1/26/09, the district and the parents reported that the QABF is designed to be administered no more than one time with any given respondent.

As described in the QABF Manual, the QABF is a measure designed for the functional assessment of behavior problems in persons with developmental disabilities. The QABF is an “indirect assessment of behavioral function that consists of 25 questions”. The questions, read aloud by the administrator of the QABF to people familiar with the student, asks them to rate the student’s reasons for engaging in a specific behavior. For example, the QABF asks, on a scale of X (does not apply) to 3 (often), did the student engage in the behavior to get attention, escape work, etc. The specific behavior rated for the student is “off-task” behaviors. Finally, the QABF has a score sheet on which the administrator tallies the answers in order for results to be available for interpretation.

The QABF Manual included statistics with relation to its reliability and validity. The person who administers the QABF is supposed to read the answer scale to the questions on the QABF and the questions themselves to the people answering the questions and record their answers.

There was no mention in the QABF Manual of specific training or credentials required to administer the QABF to the informants (those people answering the questions on the checklist) or to interpret the data collected.

Qualified Personnel

The parents reported that they felt that the case manager was not qualified to administer assessments because she had administered the QABF two times with the same people, while it should have only been administered one time with any given individual (see section on QABF above).

The parents also stated that the case manager was not qualified to serve the student because she failed to issue the quarterly progress reports as required (see section on Quarterly Reports above).

The parents stated that the case manager and the program consultant were not qualified to interpret data because as members of the 5/18/09 IEP committee, they had included information in the Present Levels of Academic Achievement and Functional Performance (Present Levels) from the Prescription Sheets in spite of the inconsistencies in the Prescriptions Sheets (see section on “Prescription Sheets” above). The parents also stated that the program consultant was not qualified to interpret assessments since she had no explanation for the inconsistencies in the aide’s scoring on the Prescription Sheets.

The case manager and the program consultant both had full special education certification for the jobs in which they were employed, with no provisions on their licenses.

District Proposal for 2009/2010 School Year

The district notified the parents on 6/17/09 that it would conduct an independent educational evaluation in the area of behavior in the beginning of the 2009/2010 school year.

CONCLUSIONS OF LAW AND REASONS

Issue 1: Whether WCSD complied with state requirements to implement the student’s IEPs with regard to:

- a. Providing quarterly progress reports for behavioral and occupational therapy (OT) goals
- b. The student’s behavioral goals

This complaint concerned an allegation that the district did not implement the student’s IEPs because it did not provide quarterly progress reports and did not implement the student’s behavioral goals.

State regulations at NAC §388.281(6)(g) require that the school district shall “provide the services and instruction deemed necessary for the pupil by the [IEP] committee.”

a. Quarterly progress reports

In this case, the student’s IEPs required that a quarterly progress report be issued for each of the IEPs’ annual goals. While all the quarterly progress reports for the two speech therapy goals were issued, only the 3rd and 4th quarter progress reports were issued for the annual behavioral goal. In addition, there were no quarterly progress reports issued for the two annual OT goals. The district was required to issue all the quarterly progress reports for all the annual goals yet did not do so.

Therefore, the investigation team concluded that WCSD did not comply with state requirements to implement the student’s IEPs in effect for the 2008/2009 school year with regard to providing quarterly progress reports for the behavioral and OT goals.

b. Behavioral Goals

In this case, the student's IEPs required that the district implement the student's behavioral goals including collecting teacher/staff recorded data to measure progress. While data were routinely collected from the time period of 3/09/09 through 6/3/09 in accordance with requirements specified in the student's IEP, such data were not collected prior to 3/09/09.

Therefore, the investigation team concluded that WCSD did not comply with state requirements to implement the student's IEPs with regard to the behavioral goals.

Issue 2: Whether WCSD complied with federal and state requirements to obtain consent in a timely fashion from the parents when it conducted an FBA with regard to the Prescription Sheets, Teacher Input Forms and the QABF including whether the parents were fully informed of all information relevant to the activity for which the consent was sought.

This complaint concerned an allegation that the district did not obtain informed parental consent with regard to using the QABF, the Teacher Input Sheets and the Prescription Sheets with regard to assessing the student's behavior and did not respond in a timely fashion to parental requests as well as concerns about the QABF, Prescription Sheets and Teacher Input Forms.

State regulations at NAC §388.300(1) state that "Except as otherwise provided in this section or NAC 388.440, informed written consent must be obtained from the parents of the pupil before ...conducting additional assessments in a reevaluation...".

Further, state regulations at NAC §388.300(5)(a) state that "Parental consent **is not** (emphasis added) required: (a) Before existing data is reviewed as part of an initial evaluation or reevaluation;".

Federal regulations at 34 CFR §300.15 state that "Evaluation means procedures used in accordance with §§304 through 300.11 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs".

OSEP clarified its position with regard to the requirement for a district to obtain parental consent when it stated "Typically, ongoing assessment of a child's progress with respect to behavioral goals and the effectiveness of behavioral interventions is provided through progress monitoring, including documented observations, and through interviews with staff members involved with the child on a daily basis...However, as noted in the February 9, 2007 letter to Dr. Kris Christiansen, if the public agency believes it is necessary to conduct a functional behavioral assessment for the purpose of determining whether the positive behavioral interventions and supports set out in the current IEP for a particular child with a disability would be effective in enabling the child to make progress toward the child's IEP goals/objectives, or to determine whether the behavioral component of the child's IEP would need to be revised, we believe the functional behavioral assessment would be considered a reevaluation under Part B for which parental consent would be required under 34 CFR § 300.300(c) (OSEP Letter, 51 IDELR 193, Letter to Sarzynki, May 6, 2008)".

In this case, the student's behavioral goal and short-term objectives required that the student's behaviors be measured by "observations and teacher/staff recorded data". The Prescription Sheets consisted of recorded data collected by the aide and the Teacher Input Forms constituted the summary of progress monitoring data that had already been collected as required in the behavior goal. Because the Prescription Sheets and Teacher Input Forms were used for progress monitoring per the IEPs, and **not for** reevaluation purposes, no additional requirement existed for the district to obtain consent to gather these data.

Therefore, the investigation team concluded that WCSD was not required by state regulations to obtain

informed parental consent with regard to the Prescription Sheets or the Teacher Input Forms, and therefore did not violate state or federal regulations with regard to this issue.

The district did begin, in response to the request of the parents, to gather data as part of an FBA to determine whether the positive behavioral interventions and supports in the students' IEPs were effective and to determine whether the behavioral components of the student's IEPs, specifically the behavior plan, needed to be revised. Therefore, the investigation team concluded that the FBA did constitute a reevaluation of the student as described in the OSEP letter above. The QABF was a questionnaire administered to teachers working with the student asking them to provide perception data regarding the student. Even though no additional testing was conducted with the student in order to answer the questions, the teachers' responses to the questions themselves did constitute new data, for which consent was necessary prior to conducting the assessment.

Therefore, the investigation team concluded that WCSD was required to obtain informed parental consent with regard to the QABF, and in not doing so, failed to comply with state and federal requirements.

Issue 3: Whether WCSD complied with state requirements to use technically sound instruments that were valid and reliable for the assessments and evaluations for which they were used with regard to the Prescription Sheets, Teacher Input Forms and the QABF.

This complaint concerned an allegation that the district did not use technically sound instruments that are valid and reliable for the assessments and evaluations for which they were used; specifically the QABF, Teacher Input Forms and Prescription Sheets.

State regulations at NAC §388.340(4)(a)(3) state "The public agency shall ensure that (a) Assessments and other evaluation materials used to assess a pupil pursuant to this section are:...(3) Used for purposes for which the assessments or measures are valid and reliable; ...".

In this case, as noted above under Issue 2 above, the Prescription Sheets and Teacher Input Forms were not part of a reevaluation of the student and therefore were not subject to the requirements applicable to assessments and evaluations.

However, as also noted above in Issue 2, the QABF was part of the reevaluation of the student and therefore required to be valid and reliable. The QABF is an assessment tool that has been documented to be valid and reliable when used as part of an FBA. When conducting the reevaluation, the district was required to use assessments that were valid and reliable, and did do so with the use of the QABF.

Therefore, the investigation team concluded that WCSD complied with state requirements to use technically sound instruments that were valid and reliable for the assessments and evaluations for which they were used, specifically with regard to the QABF.

Issue 4: Whether WCSD complied with state requirements to: 1) provide qualified personnel to 1) administer and interpret assessments with regard to the Prescription Sheets, Teacher Input Forms and the QABF and 2) appropriately and adequately prepare and train its personnel with regard to the issuance of quarterly progress reports and the inclusion of certain information in the Present Levels.

This complaint concerned allegations that the district failed to provide trained and knowledgeable personnel to serve the student and to conduct and interpret assessments.

State regulations at NAC §388.340(4)(a)(4) state “The public agency shall ensure that: (a) Assessments and other evaluation materials used to assess a pupil pursuant to this section are:...(4) Administered by trained and knowledgeable personnel;...”.

State regulations at NAC §388.330(1) and (2) state that “Any person responsible for administering or interpreting an assessment...must: (1) Possess a license or certificate in the area of the person’s professional discipline; and (2) Be trained in the area of assessment in question”.

State regulations at NAC §388.171(1) state that the district shall “...appropriately and adequately prepare and train all personnel...to ensure that the personnel have the content knowledge and skills necessary to serve pupils with disabilities”.

State regulations at NAC §388.284(1)(a) state that “Each [IEP] committee shall include in the individualized educational program it develops: (a) A statement of the pupil’s present levels of academic achievement and functional performance...”.

State regulations at NAC §388.281(2)(e) state that “The individualized educational program for a pupil must be developed, reviewed and revised by a committee which includes at least.. If not otherwise a member of the committee, a person who is familiar with the tests and other assessments performed on or by the pupil and their results and who can interpret the instructional implications of the results of the evaluation;”.

In this case, the parents identified the case manager and the program consultant as the staff members whom they felt were not adequately trained to work with the student. Both the case manager and the program consultant were licensed in Nevada with the required special education endorsements for their positions. As discussed in Issue 2 above, the Prescription Sheets and Teacher Input Forms were not tests or assessments performed on or by the student and were not used as part of a reevaluation. These data were collected in accordance with the IEP, and there were no additional requirements stated in the IEP for special knowledge or training in order to implement this component of IEP.

As also discussed above in Issue 2, the QABF was part of the reevaluation of the student. There was no requirement that a specific credential or license be held by a person administering or interpreting the QABF and no specific training required to administer it. The investigation team determined that it was reasonable to conclude that the case manager, who administered the test, was able to follow the routine directions for administering and interpreting the QABF. (That is, she was able to read aloud both the answer key and each question to the staff members and was able to tally the answers on a score sheet and interpret the results according to the QABF score sheet). Further, while both the district and the parents agree that that the QABF was mistakenly given more than one time to a respondent, which does not align to the intended use of the assessment, the fact that a mistake was made in its administration does not negate the fact that the district provided a trained and knowledgeable person to administer the QABF, who had a license in her area of professional discipline and had the necessary training to administer and interpret it.

Also, in this case there was no requirement in the IEPs for any specific or unique training of the person responsible for issuing the quarterly progress reports. The investigation team concluded that the absence of required quarterly reports, (though noncompliant in relation to IEP implementation), and the program manager’s inability to explain the Prescription Sheets’ inconsistencies, were not sufficient to determine that the district had failed to meet its obligation to provide appropriately and adequately prepared personnel trained to ensure that they had the content knowledge and skills necessary to serve the student.

Finally, in this case it was the responsibility of the 5/18/09 IEP committee to develop the 5/18/09 IEP, including the Present Levels. No single member of the IEP committee develops the IEP. The case manager and the program consultant, as discussed previously in this section were fully licensed for the positions they held, and as such were qualified and trained to be members of the 5/18/09 IEP committee and to participate in the development of the Present Levels.

Therefore, the investigation team concluded that WCSD did comply with state requirements to: 1) provide qualified personnel to administer and interpret assessments with regard to the QABF and 2) to appropriately and adequately prepare and train its personnel with regard to the issuance of quarterly reports and the inclusion of certain information in the Present Levels.

ORDER FOR CORRECTIVE ACTION

The WCSD is required to take corrective actions to address the violations found in this complaint investigation. Specifically, the district did not:

1. Implement the IEPs with regard to the behavior goals from the beginning of the 2008/2009 school year through 3/3/09;
2. Implement the IEPs with regard to providing quarterly progress reports for the behavior and OT annual goals; and
3. Obtain parental consent for the use of the QABF.

Directed Action

The WCSD failed to document the implementation of the behavior goal from the beginning of the 2008/2009 school year through 3/3/09, 2009. However, the WCSD did agree to conduct an independent educational evaluation in the area of behavior at the beginning of the 2009/2010 school year. As a result, the WCSD is ordered to complete the independent educational evaluation within 30 days following the first day of school for the fall 2009 semester and convene an IEP meeting no later than 10 days following its completion in order for the IEP committee to update the present levels, to consider the results of the FBA assessments, and to make any necessary programming changes for the student with regard to the student's behavior. A copy of the revised IEP must be submitted to the NDE no later than 5 days following the IEP meeting ordered above.

Professional Development/Training

Within 30 days of receipt of this report, the WCSD must develop and submit to the NDE a proposed Corrective Action Plan (CAP). The proposed CAP must:

1. Include a plan to review and revise, as necessary, district policies and procedures with regard to the provision of periodic reports on the progress students make towards meeting the annual goals; the implementation of behavior goals and the requirements for obtained parental consent when conducting a reevaluation.
2. Provide professional development for teachers and administrators at the school site on the requirements to provide periodic reports on the progress students make towards meeting the annual goals, implementing behavioral goals and obtaining parental consent when conducting a reevaluation.

The CAP must be approved by the NDE prior to implementation. Following implementation of the approved activities, documentation of district corrective actions must be provided to the NDE within 30 days of completion.